

“Regulatory Relief” for Banking: Selected Legislation in the 114th Congress

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May 14, 2015

Congressional Research Service

7-5700

www.crs.gov

R44035

Summary

The 114th Congress is considering legislation to provide “regulatory relief” for banks. The need for this relief, some argue, results from new regulations introduced in response to vulnerabilities that were identified during the financial crisis that began in 2007. Some have contended that the increased regulatory burden is resulting in significant costs that restrain economic growth and consumers’ access to credit. Regulatory burden is the cost associated with government regulation and its implementation. Others, however, believe the current regulatory structure strengthens financial stability and increases protections for consumers, and they are concerned that regulatory relief for banks could negatively affect consumers and market stability. Regulatory relief proposals, therefore, may involve a trade-off between reducing costs associated with regulatory burden and reducing benefits of regulation.

The bills analyzed in this report propose to provide regulatory relief to banks in a number of different ways. Title VIII of H.R. 37 would extend the phase-in period for a provision of the Volcker Rule. Title III of H.R. 37 would expand exemptions on capital issuance to include thrifts. Similarly, H.R. 650, H.R. 1259, and H.R. 1529 would expand exemptions from mortgage regulations. H.R. 601 would limit the circumstances under which reporting requirements about privacy notices are triggered. H.R. 685 would change the definition of points and fees associated with a mortgage to exclude certain costs from a regulatory requirement. H.R. 1408 would delay the implementation of new capital requirements until regulators conduct a study of their impact on mortgage servicing assets (MSAs).

Banking regulation has various policy goals, and the bills under consideration span multiple policy areas. H.R. 601, H.R. 650, H.R. 685, H.R. 1259, and H.R. 1529 are examples of bills that address a trade-off between reducing the regulatory burden of banks and reducing consumer protection. H.R. 1408 and Title VIII of H.R. 37 are examples of legislation that attempt to reconcile a trade-off between safety and soundness and regulatory burden. Title III of H.R. 37 is an example of legislation with a trade-off between investor protection and the regulatory burden on thrifts. Some of these proposals modify new regulations, whereas others modify regulations that predate the crisis.

Several of the bills mentioned above would modify regulations issued by the Consumer Financial Protection Bureau (CFPB), a regulator created by the Dodd-Frank Act (P.L. 111-203) to provide an increased regulatory emphasis on consumer protection. The Dodd-Frank Act gave the CFPB new authority and transferred existing authorities to it from the banking regulators. These bills could be viewed in light of a broader policy debate about whether the CFPB has struck the appropriate balance between consumer protection and regulatory burden and whether congressional action is needed to achieve a more desirable balance.

This report discusses regulatory relief legislation for banks in the 114th Congress that, at the time this report was published, has seen floor action or has been ordered to be reported by a committee. If Congress acts on additional legislation, the report will be updated to include it.

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Introduction

The 114th Congress is considering legislation to provide “regulatory relief” for banks.¹ The need for such relief, some argue, results from the increased regulation that was applied in response to vulnerabilities that became evident during the financial crisis that began in 2007. In the aftermath of the crisis, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act; P.L. 111-203), a wide-ranging package of regulatory reform legislation, was enacted.² As financial regulators have implemented the Dodd-Frank Act and other reforms, some in Congress claim that the pendulum has swung too far toward excessive regulation. They argue that the additional regulation has resulted in significant costs that have stymied economic growth and restricted consumers’ access to credit. Others, however, believe the current regulatory structure has strengthened financial stability and increased protections for consumers. They are concerned that regulatory relief for banks could negatively affect consumers and market stability.

In assessing whether regulatory relief is called for or whether a regulation has not gone far enough, a central question is whether an appropriate trade-off has been struck between the benefits and costs of regulation. The different objectives and potential benefits of financial regulation include enhancing the safety and soundness of certain institutions; protecting consumers and investors from fraud, manipulation, and discrimination; and promoting financial stability while reducing systemic risk. The costs associated with government regulation are referred to as *regulatory burden*.³ The presence of regulatory burden does not necessarily mean that a regulation is undesirable or should be repealed. A regulation can have benefits that could outweigh its costs, but the presence of costs means, tautologically, that there is regulatory burden. Regulatory requirements often are imposed on the providers of financial services, so banks frequently are the focus of discussions about regulatory burden. But some costs of regulation are passed on to consumers, so consumers also may benefit from relief. Any benefits to banks or consumers of regulatory relief, however, would need to be balanced against a potential reduction to consumer protection and to the other benefits of regulation.

The concept of regulatory burden can be contrasted with the phrase *unduly burdensome*. Whereas regulatory burden is about the costs associated with a regulation, unduly burdensome refers to the balance between benefits and costs. For example, some would consider a regulation to be unduly burdensome if costs were in excess of benefits or the same benefits could be achieved at a lower cost. But the mere presence of regulatory burden does not mean that a regulation is unduly burdensome. Policymakers advocating for regulatory relief argue that the regulatory burden associated with certain regulations rises to the level of being unduly burdensome for banks, whereas critics of those relief proposals typically believe the benefits of regulation outweigh the regulatory burden.

¹ For a summary of the regulatory relief debate, see CRS Report IF10162, *Introduction to Financial Services: “Regulatory Relief,”* by Sean M. Hoskins and Marc Labonte.

² For a summary, see CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*, coordinated by Baird Webel.

³ For an analysis of the regulatory burden on small banks, see CRS Report R43999, *An Analysis of the Regulatory Burden on Small Banks*, by Sean M. Hoskins and Marc Labonte.

Types of Regulatory Relief Proposals

As relief proposals for banks are debated, a useful framework to categorize proposals includes assessing to *whom* relief would be provided and *how* relief would be provided. Relief could be provided either to all banks to which a regulation applies or to only a subset of banks based on size, type, or the activities the banks perform. Policymakers also would need to consider whether relief should be provided, for example, by repealing entire provisions, by providing exemptions from specific requirements, or by tailoring a requirement so that it still applies to certain entities but does so in a less burdensome way. Examples of different forms of tailoring are streamlining the regulation, grandfathering existing firms or types of instruments from the regulation, and phasing in a new regulation over time.

Some regulatory relief policies can be characterized as *forward-looking*—focusing on how to modify the rulemaking process to reduce the burden associated with future rulemakings, such as strengthening existing cost-benefit analysis requirements on financial regulators to bring them in line with executive agency standards. Alternatively, regulatory relief can be *backward-looking*—modifying existing regulations. Modifications can be made to regulations stemming from statutory requirements, regulatory or judicial interpretations of statute, or requirements originating from regulators' broad discretionary powers.

This report assesses backward-looking banking regulatory relief proposals that have been marked up by committee or have seen floor action in the 114th Congress. Because banks are involved in many different activities, this report does not address all regulatory relief proposals that would affect each aspect of a bank's business (e.g., it does not cover proposals affecting banks' involvement in areas such as derivatives) but focuses on those proposals that address the traditional areas of banking, such as taking deposits and offering loans.⁴ The proposals discussed in this report vary with regard to the type of relief, including to whom relief would be provided and the manner in which it would be provided. Although many of the proposals would modify regulations issued after the crisis, some would adjust policies that predated the financial crisis and some proposals are characterized as technical fixes. Further, the report does not cover banking legislation that has seen legislative action but does not involve regulatory relief. For each proposal, the report explains what the bill would do and the main arguments offered by its supporters and opponents.

⁴ Some bills would modify a regulation that applies to banks and nonbanks engaged in a specific activity.

H.R. 37: Promoting Job Creation and Reducing Small Business Burdens Act

H.R. 37 passed the House on January 14, 2015. It contained 11 titles covering a variety of financial services issues. This report reviews two titles that apply to banks.

Title III: Holding Company Registration Threshold Equalization Act⁵

Title III of H.R. 37 would raise the exemption threshold on the Securities and Exchange Commission's (SEC's) registration for thrift holding companies to match the current exemptions for bank holding companies (BHCs).

Historically, under the Securities Act of 1933 (P.L. 73-22), banks and BHCs, similar to nonfinancial firms, generally were required to register securities with the SEC if they had total assets exceeding \$10 million and the shares were held (as per shareholders of record) by 500 shareholders or more. Banks and BHCs also were allowed to stop registering securities with the SEC, a process known as *deregistration*, if the number of their shareholders of record fell to 300 shareholders or fewer.

Title VI of the Jumpstart Our Business Startups Act (JOBS Act; P.L. 112-106) raised the SEC shareholder registration threshold from 500 shareholders to 2,000 shareholders and increased the upper limit for deregistration from 300 shareholders to 1,200 shareholders for those banks and nonfinancial firms. In other words, the JOBS Act made it easier for banks and BHCs to increase the number of their shareholders while remaining unregistered private banks and, if already registered, to voluntarily deregister while also adding more shareholders.⁶ The provision went into effect immediately upon the enactment of the JOBS Act on April 5, 2012.

These changes made by the JOBS Act did not apply to savings and loan holding companies (SLHCs). Title III of H.R. 37 would amend the Securities Exchange Act of 1934 by extending the higher registration and deregistration shareholder thresholds in the JOBS Act for banks and BHCs to SLHCs.⁷ Savings and loans (also known as thrifts and savings banks) are similar to banks in that they take deposits and make loans, but their regulation is somewhat different. Over time, the differences between banks and savings and loans have narrowed.⁸ Under the provision, an SLHC would be required to register with the SEC if its assets exceed \$10 million and it has 2,000 shareholders of record, up from the current requirement of 500 shareholders of record. SLHCs

⁵ This section was authored by Gary Shorter, specialist in Financial Economics.

⁶ This section largely derives from: Katherine Koops, "The JOBS Act and SEC Deregistration: New Thresholds and Special Considerations for Banks and Bank Holding Companies," *Bank Bryan Cave Law Firm*, June 8, 2012, at <http://www.bankbryancave.com/2012/06/the-jobs-act-and-sec-deregistration-new-thresholds-and-special-considerations-for-banks-and-bank-holding-companies/>.

⁷ Similar language was included in H.R. 801 in the 113th Congress. H.R. 801 passed the House on January 14, 2014.

⁸ See CRS Report R42572, *The Consumer Financial Protection Bureau (CFPB): A Legal Analysis*, by David H. Carpenter.

that want to deregister from the SEC would have to have no more than 1,200 shareholders of record, an increase over the current 300 or fewer shareholders.

Policy Discussion. Generally speaking, the central perceived benefit of SEC registration is to enhance investor protection by ensuring that investors have access to significant financial and nonfinancial data about firms and the securities they issue. The cost of SEC registration is the regulatory burden on the firm issuing securities associated with complying with SEC requirements, which potentially raises the cost of capital and reduces how much capital a firm can raise. For small firms, the regulatory burden of registration is thought to be greater than for larger firms.⁹

Policymakers attempt to reach the optimal trade-off between costs and benefits of SEC registration by exempting firms below a certain size from registration requirements. The JOBS Act raised this threshold for banks, modifying the balance between costs and benefits.

Reports indicate that after passage of the JOBS Act, a number of privately held banks and BHCs took advantage of Title VI's reduction in shareholder ownership registration triggers by raising capital from additional shareholders without having to register with the SEC.¹⁰ Some banks also have taken the opportunity to deregister from the SEC.¹¹ One of the few studies on changes to the financial health of banks that took advantage of the JOBS Act threshold changes to deregister found that the act was generally, but not entirely, financially beneficial to banks. For example, it found that, on average, the legislation resulted in \$1.31 in higher net bank income and \$3.28 lower pretax expenses for every \$1.00 of bank assets and was responsible for \$1.54 million in increased assets per bank employee.¹² The study did not attempt to estimate the costs to investors of reduced disclosure under the changes made by the JOBS Act.

In potentially expanding the exemption threshold on SEC registration for thrift holding companies, there are two main points to consider. First, should exemption levels from SEC registration requirements be different for thrifts and savings and loans than for banks? Current law makes it more difficult for small thrifts to raise capital than for small banks. Second, are the costs and benefits of registration requirements for small banks better balanced at the higher thresholds enacted for banks in the JOBS Act or the lower thresholds in current law for thrifts?

⁹ See Independent Community Bankers of America (ICBA), "ICBA Statement on Senate Passage of JOBS Act," press release, March 22, 2012, at <http://www.icba.org/news/newsreleasedetail.cfm?ItemNumber=123582>.

¹⁰ For example, see ICBA, "Key JOBS Act Provision Must Be Addressed to Benefit Thrifts," press release, September 13, 2012, at <http://www.icba.org/files/ICBASites/PDFs/test091312.pdf>.

¹¹ For example, see Jeff Blumenthal, "100-plus Banks Deregister Stock since JOBS Act," *Philadelphia Business Journal*, February 15, 2013, at <http://www.bizjournals.com/philadelphia/print-edition/2013/02/15/100-plus-banks-deregister-stock-since.html>; Brian Yurcan, "Small Banks Deregister in Drove Due to JOBS Act," *Bank Tech*, May 30, 2012, at <http://www.banktech.com/compliance/small-banks-deregister-in-drove-due-to-jobs-act/d/d-id/1295425>.

¹² Joshua Mitts, *Did the JOBS Act Benefit Community Banks? A Regression Discontinuity Study*, April 25, 2013, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2233502.

Title VIII: Restoring Proven Financing for American Employers Act¹³

Title VIII of H.R. 37 would modify a provision of the final rule implementing Section 619 of the Dodd-Frank Act, also known as the “Volcker Rule.” It would modify the Volcker Rule’s treatment of certain collateralized loan obligations (CLOs) as impermissible covered fund investments.¹⁴ It would allow banks with investments in certain CLOs issued before January 31, 2014, an additional two years, until July 21, 2019, to be in compliance with the Volcker Rule.

A CLO is a form of securitization in which a pool of loans (typically, commercial loans) is funded by issuing securities. CLOs provide nearly \$300 billion in financing to U.S. companies.¹⁵ The Volcker Rule has two main parts—it prohibits banks from proprietary trading of “risky” assets and from “certain relationships” with “risky” investment funds.¹⁶ H.R. 37 involves the latter. In December 2013, five financial regulators issued a final rule defining which funds are considered risky and therefore prohibited under the Volcker Rule. Many of the trusts used to facilitate CLOs were included in the definition of risky investment funds. As a result, banks would have to divest themselves of certain CLO-related securities if the securities conveyed an impermissible interest in the trust. The Volcker Rule does not ban CLOs or banking organizations from holding CLOs; rather, it prohibits banking organizations from owning securities conferring ownership-like rights in CLOs. Regulators already have exercised their discretion to extend the conformance period for banks to divest themselves of these CLO-related assets to 2016 and could extend until 2017. An extension beyond 2017 could require additional agency findings. H.R. 37 would extend the conformance period to 2019 for all covered CLOs.¹⁷

H.R. 37 only applies to banks that hold securities issued by existing CLOs funded by commercial loans. It would limit the extension period for conformance to those CLO securities issued prior to January 31, 2014. Going forward, bank participation in newly issued CLOs would have to be structured to comply with the Volcker Rule’s prohibition of bank interests in risky investment firms.¹⁸

Policy Discussion. The potential economic impact of H.R. 37 depends on the characteristics of CLO-related obligations already held in the banking system. If banks did not expect their CLO holdings to be prohibited by the Volcker Rule, they may not have made any preparations to comply with it. Thus, proponents of extending the conformance period argue that rapid divestiture of CLO-related securities could force banks to sell these securities at a loss, perhaps in fire sales,

¹³ This section was authored by Edward V. Murphy, specialist in Financial Economics.

¹⁴ The language in Title VIII originally was passed by the House as H.R. 4167 (in the 113th Congress) by voice vote under suspension on April 29, 2014.

¹⁵ U.S. Congress, House Committee on Financial Services, Subcommittee on Capital Markets and Government Sponsored Enterprises, *The Dodd-Frank Act’s Impact on Asset-Backed Securities*, Testimony of Meredith Coffey, 113th Cong., 2nd sess., February 26, 2014.

¹⁶ CRS Legal Sidebar, *What Companies Must Comply with the Volcker Rule?*, David H. Carpenter. “Certain relationships,” as defined by P.L. 111-203, §619, includes acquiring or retaining “any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.”

¹⁷ CRS Legal Sidebar, *Congress Contemplates Extending Volcker Rule Conformance Period for CLO Investments*, David Carpenter.

¹⁸ CRS Legal Sidebar, *What Companies Must Comply with the Volcker Rule?*, David H. Carpenter.

if an extension is not granted. They argue that such stress in the banking system may curtail credit available to small- and medium-sized commercial businesses.¹⁹

Opponents of Title VIII of H.R. 37, including the White House, argue that extending the conformance period would undermine the intent of the Volcker Rule and allow risky securities to remain in the banking system. They contend that it could result in future destabilizing losses for banks that hold risky securities.²⁰ On the other hand, H.R. 37 merely changes the grandfathering date of existing commercial loan-related CLO securities from 2017 to 2019. It would neither prohibit conforming CLO securities from being created in the future to fund small and medium businesses nor exempt newly issued CLOs from the Volcker Rule going forward.

H.R. 601: Eliminate Privacy Notice Confusion Act²¹

H.R. 601 was passed by the House on April 13, 2015.²² It would reduce the number of circumstances under which financial firms, including banks, were required to send customers privacy notices. It is an example of a regulatory relief bill amending a law that predates the financial crisis.

Under a provision of the Gramm-Leach-Bliley Act (15 U.S.C. §6803), financial firms are required to send customers privacy notices when they establish a relationship with the customer and annually thereafter. Firms also are required to send customers notices explaining how customers may opt out of allowing the firm to share their personal information with third parties, under certain circumstances.²³

Under H.R. 601, financial firms would no longer be required to send annual privacy notices if their privacy policy had not changed. Cases in which third-party information sharing triggers notification and the opportunity to opt out under current law would remain unchanged.²⁴

Policy Discussion. Financial firms argue that the privacy notice requirement is unduly burdensome to them and of little value to customers because the notices are lengthy, confusing, and thus likely to be ignored. Defenders of current law argue that it provides consumer protection and safeguards privacy.²⁵

¹⁹ Hamilton Place Strategies, *Regulating Risk: Implementation of New Regulation*, January 2015, at <http://hamiltonplacestrategies.com/sites/default/files/newsfiles/HPS%20White%20Paper%20-%20Regulating%20Risk%20-%20Volcker%20and%20CLOs.pdf>.

²⁰ Executive Office of the President, *Statement of Administrative Policy*, January 12, 2015, at http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr37r_20150112.pdf.

²¹ This section was authored by Marc Labonte, specialist in Macroeconomic Policy.

²² A similar bill in the 113th Congress, H.R. 749, was ordered to be reported by the House Financial Services Committee.

²³ For a summary of the requirement, see Federal Trade Commission, *In Brief: The Financial Privacy Requirements of the Gramm-Leach-Bliley Act*, July 2002, at <https://www.ftc.gov/tips-advice/business-center/guidance/brief-financial-privacy-requirements-gramm-leach-bliley-act>.

²⁴ U.S. Congress, House Committee on Financial Services, *Eliminate Privacy Notice Confusion Act*, report to accompany H.R. 601, 114th Cong., 1st sess., April 13, 2015, H.Rept. 114-59.

²⁵ CFPB, 12 C.F.R. Part 1016, Docket No. CFPB-2014-0010, RIN 3170-AA39, p. 64059, at <http://www.gpo.gov/fdsys/pkg/FR-2014-10-28/pdf/2014-25299.pdf>; <http://fsroundtable.org/hr-601-eliminate-privacy-notice-confusion-act/>.

The Consumer Financial Protection Bureau (CFPB) contends that a rule it issued in 2014 modifying Regulation P (which implements 15 U.S.C. §6803) will reduce the regulatory burden of compliance without undermining the policy's benefits.²⁶ The 2014 CFPB rule allows firms under certain conditions to post privacy notices on the Internet rather than mail hard copies to customers. The rule requires firms to continue sending printed notices when privacy policies are changed or information is shared with third parties. Firms are required to provide annual notification that privacy notices are available on the Internet and to provide printed notices upon request. Proponents of H.R. 601 believe additional relief is needed beyond what was provided in the 2014 CFPB rule.

The Congressional Budget Office (CBO) estimates that H.R. 601 as ordered reported would result in an increase in direct spending that would not be significant.²⁷ The bill would not affect revenues or discretionary spending.

H.R. 650: Preserving Access to Manufactured Housing Act of 2015²⁸

H.R. 650 was passed by the House on April 14, 2015.²⁹ H.R. 650 as passed would affect the market for manufactured housing by amending the definitions of *mortgage originator* and *high-cost mortgage* in the Truth-in-Lending Act (TILA; 15 U.S.C. §§1601, et seq.).³⁰ Manufactured homes, which often are located in more rural areas, are a type of single-family housing that is factory built and transported to a placement site rather than constructed on-site.³¹ When purchasing a manufactured home, a consumer does not necessarily have to own the land on which the manufactured home is placed. Instead, the consumer could lease the land, a practice that is different from what is often done with a site-built home.³² Manufactured housing also differs from site-built properties in other ways, such as which consumer protection laws apply to the transaction and how state laws title manufactured housing.³³

The Dodd-Frank Act changed the definitions for mortgage originator and high-cost mortgage to provide additional consumer protections to borrowers for most types of housing transactions, including manufactured housing. Some argue that these protections restrict credit for manufactured housing. H.R. 650 would modify the definitions of mortgage originator and high-

²⁶ Consumer Financial Protection Bureau (CFPB), 12 C.F.R. Part 1016, Docket No. CFPB–2014–0010, RIN 3170–AA39, at <http://www.gpo.gov/fdsys/pkg/FR-2014-10-28/pdf/2014-25299.pdf>.

²⁷ Congressional Budget Office (CBO), *Cost Estimate of H.R. 601*, April 7, 2015, at <https://www.cbo.gov/sites/default/files/cbofiles/attachments/hr601.pdf>.

²⁸ This section was authored by Sean Hoskins, analyst in Financial Economics.

²⁹ A similar bill in the 113th Congress, H.R. 1779, was ordered to be reported by the House Financial Services Committee.

³⁰ 15 U.S.C. §§1601 et seq.

³¹ CFPB, *Manufactured-housing consumer finance in the United States*, September 2014, p. 9, at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.

³² According to the CFPB, about “three-fifths of manufactured-housing residents who own their home also own the land it is sited on.” CFPB, *Manufactured-housing consumer finance in the United States*, September 2014, p. 6, at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.

³³ For more, see CFPB, *Manufactured-housing consumer finance in the United States*, September 2014, at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.

cost mortgage with the goal of increasing credit. Critics of the proposal are concerned about the effect on consumers of reducing the consumer protections. The first part of H.R. 650 would not affect banks but would affect manufactured-home retailers. It is discussed briefly to provide context for the second part of H.R. 650, which would affect banks more directly.

Definition of Mortgage Originator. In response to problems in the mortgage market when the housing bubble burst, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act; P.L. 110-289) and the Dodd-Frank Act established new requirements for mortgage originators' licensing, registration, compensation, training, and other practices. A mortgage originator is someone who, among other things, "(i) takes a residential mortgage loan application; (ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or (iii) offers or negotiates terms of a residential mortgage loan."³⁴ The current definition in implementing the regulation excludes employees of manufactured-home retailers under certain circumstances, such as "if they do not take a consumer credit application, offer or negotiate credit terms, or advise a consumer on credit terms."³⁵ H.R. 650 would expand the exception such that retailers of manufactured homes or their employees would not be considered mortgage originators unless they received more compensation for a sale that included a loan than for a sale that did not include a loan.

Policy Discussion. Supporters of H.R. 650 argue that the current definition of mortgage originator is too broad and negatively affects the manufactured-housing market. Manufactured-home retailers "have been forced to stop providing technical assistance to consumers during the process of home buying" because of concerns that providing this assistance will result in the retailers being deemed loan originators, which in turn will lead to costs that the manufactured-home retailers do not want to bear, according to supporters.³⁶ Supporters of the bill argue that this situation has unnecessarily complicated the purchase process for consumers. H.R. 650 would allow manufactured-home retailers to provide minimal assistance to consumers for which they would not be compensated.

Opponents of H.R. 650, however, note that the existing protections are intended to prevent retailers from pressuring consumers into making their purchase through a particular creditor. Expanding the exemption, they argue, "would perpetuate the conflicts of interest and steering that plague this industry and allow lenders to pass additional costs on to consumers."³⁷

High-Cost Mortgage. H.R. 650 also would narrow the definition of high-cost mortgage for manufactured housing. A high-cost mortgage often is referred to as a "HOEPA loan" because the Home Ownership and Equity Protection Act (HOEPA; P.L. 103-325) provides additional consumer protections to borrowers for certain high-cost transactions involving a borrower's home. The Dodd-Frank Act expanded the protections available to high-cost mortgages by having more types of mortgage transactions be covered and by lowering the thresholds at which a

³⁴ P.L. 111-203, §1401. The definition of mortgage originator has multiple exemptions, such as for those who perform primarily clerical or administrative tasks in support of a mortgage originator or those who engage in certain forms of seller financing.

³⁵ CFPB, *Manufactured-housing consumer finance in the United States*, September 2014, p. 51, at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.

³⁶ Rep. Stephen Fincher, *Congressional Record*, vol. 161, part 53 (April 14, 2015), p. H2178.

³⁷ Corporation for Enterprise Development, "Consumer Groups Sign On Letter Opposing H.R. 650," at http://cfed.org/assets/pdfs/policy/federal/consumer_groups_sign_on_letter_opposing_HR_650.pdf.

mortgage would be deemed high cost. The CFPB issued a rule implementing those changes in 2013.³⁸

Consumers receive additional protections on high-cost transactions, such as “special disclosure requirements and restrictions on loan terms, and borrowers in high-cost mortgages have enhanced remedies for violations of the law.”³⁹ Prior to originating the mortgage, lenders are required to receive “written certification that the consumer has obtained counseling on the advisability of the mortgage from a counselor that is approved to provide such counseling.”⁴⁰ Because of these protections and the added legal liability associated with originating a high-cost mortgage, originating a HOEPA loan is generally considered more costly for a lender (which could be either a bank or a nonbank) than originating a non-HOEPA loan. This is an example of the trade-off between consumer protection and credit availability—if a loan is deemed high-cost, the consumer has added protections, but the lender may be less willing to originate it.

A mortgage is high cost if certain thresholds are breached related to the mortgage’s (1) annual percentage rate (APR) or (2) points and fees.⁴¹

The APR is a measure of how much a loan costs expressed as an annualized rate. Computation of the APR includes the interest rate as well as certain fees, such as compensation to the lender and other expenses. Under the *APR test*, a loan is considered to be a high-cost mortgage if the APR exceeds the average prime offer rate (APOR, an estimate of the market mortgage rate based on a survey of rates) by more than 6.5 percentage points for most mortgages or by 8.5 percentage points for certain loans under \$50,000.⁴² H.R. 650 would increase the threshold for the latter category to 10 percentage points above the APOR for certain transactions involving manufactured housing below \$75,000.

Points and fees, the second factor, refers to certain costs associated with originating the mortgage. The term *point* refers to compensation paid up front to the lender by the borrower. A point is expressed as a percentage of the loan amount, with one point equal to 1% of the loan amount.⁴³ The fees included in the definition of points and fees include prepayment penalties, certain types of insurance premiums, and other real estate-related fees. Under the *points and fees test*, the mortgage is high cost if the points and fees exceed (1) 5% of the total amount borrowed for most loans in excess of \$20,000 or (2) the lesser of 8% of the total amount or \$1,000 for loans of less than \$20,000.⁴⁴

H.R. 650 would create a third category for the points and fees test for manufactured-housing loans. Under the third category, certain types of manufactured-housing transactions would be

³⁸ CFPB, “High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X),” 78 *Federal Register* 6855, January 31, 2013.

³⁹ *Ibid.*, 6856.

⁴⁰ 12 C.F.R. §1026.34.

⁴¹ In addition to the APR test and points and fees test, a mortgage can be high cost if there is a prepayment penalty that meets certain criteria, although that issue is not addressed by H.R. 650. See *Ibid.*

⁴² 15 U.S.C. §1602(bb). Other thresholds apply to junior liens.

⁴³ In some cases, a point may be excluded from the definition of points and fees if the point results in a reduction in the interest rate that is charged to the borrower. See P.L. 111-203, §1412.

⁴⁴ 15 U.S.C. §1602(bb).

deemed high cost if the points and fees on loans less than \$75,000 were greater than 5% of the total loan amount or greater than \$3,000. This higher threshold would make it less likely that a manufactured-housing loan would be high cost under the points and fees test, all else equal.

Policy Discussion. Data from the CFPB's September 2014 report on the manufactured-housing market indicate that manufactured-housing loans are more likely to be HOEPA loans than loans for traditional, site-built homes. The CFPB analyzed data for originations from 2012, which was before the more expansive Dodd-Frank definition of high-cost mortgage took effect. The CFPB estimated the share of the 2012 market that would have violated the APR test (which is just one of the high-cost triggers) had the current thresholds been in effect and found that "0.2 percent of all home-purchase loans in the U.S. have an interest rate that exceeds the HOEPA APR threshold. This fraction is only 0.01 percent for site-built homes but nearly 17 percent for manufactured homes."⁴⁵

As the CFPB notes, this estimate of the share of HOEPA loans may *understate* the true share because it does not include the points and fees test, but it also may *overstate* the true share because lenders may have adjusted the points, fees, interest rate, profitability of the loan, and other factors so that fewer loans would have been high-cost had the new thresholds been in effect.⁴⁶ Either way, the CFPB's data are illustrative of the fact that a larger share of manufactured-housing loans than site-built loans is likely to be affected by the high-cost mortgage requirements. The CFPB stated that the changes to HOEPA made by Dodd-Frank likely would lead to a larger share of all loans being high cost, but "the resulting increase in the share of high-cost mortgages was much larger for manufactured-housing loans than for loans on site-built homes."⁴⁷

Manufactured-housing loans are more likely to be high cost for several reasons. Manufactured-housing loans usually are smaller than loans for site-built properties. The CFPB's report found that the "median loan amount for site-built home purchase was \$176,000, more than three times the manufactured home purchase loan median of \$55,000."⁴⁸ Because manufactured-housing loans often are for a smaller amount, they are likely to have higher APR and points and fees ratios; the APR and points and fees computations include some fixed costs that do not vary proportionately to the size of the loan. All else equal, smaller loans would be more likely to breach the thresholds. To account for this, the APR test and the points and fees test have thresholds that vary based on the size of the loan, as explained above. Additionally, because of how some states title manufactured homes and other unique aspects of the manufactured-housing market, a manufactured-housing loan is likely to have a higher interest rate than a loan involving a site-built home (all else equal), which makes it more likely that the loan will violate the APR threshold.⁴⁹

Supporters of H.R. 650 argue that the high-cost thresholds are poorly targeted for manufactured-housing loans because the fixed costs and higher rates associated with smaller manufactured-

⁴⁵ CFPB, *Manufactured-housing consumer finance in the United States*, September 2014, pp. 35-36, at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.

⁴⁶ *Ibid.*, p. 48.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, p. 30.

⁴⁹ *Ibid.*, p. 6.

housing loans make it more likely that the thresholds will be exceeded.⁵⁰ The existing adjustments for small-dollar loans are insufficient and allow too many manufactured-housing loans to be high cost. As a result, critics of the current threshold argue, credit will be restricted as some lenders will be less inclined to bear the expense and liability associated with originating high-cost manufactured-housing loans. H.R. 650, they claim, is important for ensuring that credit is available for borrowers who want to purchase a manufactured home.

Opponents of H.R. 650 argue that the APR and points and fees thresholds already are adjusted for the size of the loan and do not need to be further modified. Doing so would weaken consumer protections, they argue, for borrowers who are likely to have lower incomes and be more "economically vulnerable consumers."⁵¹ The Obama Administration has said that "if the President were presented with H.R. 650, his senior advisors would recommend that he veto the bill."⁵²

CBO estimates that H.R. 650 as ordered reported "would increase direct spending by less than \$500,000."⁵³ The bill would not affect revenues or discretionary spending.

H.R. 685: Mortgage Choice Act of 2015⁵⁴

H.R. 685 was passed by the House on April 14, 2015.⁵⁵ H.R. 685 as passed would modify the definition of points and fees to exclude from the definition (1) insurance held in escrow and (2) certain fees paid to affiliates of the lender. As is elaborated upon below, points and fees refers to certain costs that are paid by the borrower related to lender compensation and other expenses that are associated with originating the mortgage. How points and fees are defined can have an effect on *credit availability* (mortgage lenders argue that the current definition of points and fees makes it harder for them to extend credit) and an effect on *consumer protection* (consumer groups argue that expanding the definition could lead to borrowers being steered into more expensive mortgages that they could be less able to repay).

The Ability-to-Repay Rule and Points and Fees. The definition of points and fees is a component of multiple rules, but it is often discussed in the context of the Ability-to-Repay (ATR) rule.⁵⁶ Title XIV of the Dodd-Frank Act established the ATR requirement and instructed the CFPB to establish the definition of a qualified mortgage (QM) as part of its implementation. The ATR rule requires a lender to determine, based on documented and verified information, that at the

⁵⁰ Manufactured Housing Institute, "The Preserving Access to Manufactured Housing Act (S. 682/H.R. 650)," at <http://www.manufacturedhousing.org/webdocs/S%20682%20HR%20650%20leave%20behind%20use.pdf>.

⁵¹ Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy: H.R. 650 - Preserving Access to Manufactured Housing Act of 2015*, April 13, 2015, at https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr650r_20150413.pdf.

⁵² Ibid.

⁵³ CBO, *Cost Estimate of H.R. 650*, April 3, 2015, at http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr_650.pdf.

⁵⁴ This section was authored by Sean Hoskins, analyst in Financial Economics.

⁵⁵ A similar bill, H.R. 3211, passed the House in the 113th Congress.

⁵⁶ CFPB, "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act," 78 *Federal Register* 6407, January 30, 2013. For more on the rule, see CRS Report R43081, *The Ability-to-Repay Rule: Possible Effects of the Qualified Mortgage Definition on Credit Availability and Other Selected Issues*, by Sean M. Hoskins.

time a mortgage loan is made the borrower has the ability to repay the loan. Failure to make such a determination could result in a lender having to pay damages to a borrower who brings a lawsuit claiming that the lender did not follow the ATR rule. This legal risk gives lenders added incentive to comply with the ATR rule.

One of the ways a lender can comply with the ATR rule is by originating a QM.⁵⁷ A QM is a mortgage that satisfies certain underwriting and product-feature requirements, such as having payments below specified debt-to-income ratios and having a term no longer than 30 years. By making a QM, a lender is presumed to have complied with the ATR rule and receives legal protections that could reduce its potential legal liability. A lender can comply with the ATR rule by making a mortgage that is not a QM, but the lender will not receive the additional legal protections. The definition of a QM, therefore, is important to a lender seeking to minimize its legal risk. Because of this legal risk, some are concerned that, at least in the short term, the vast majority of mortgages that are originated will be mortgages meeting the QM standards due to the legal protections that QMs afford lenders, even though there are other means of complying with the ATR rule.⁵⁸

As an additional requirement for a mortgage to be a QM, certain points and fees associated with the mortgage must be below specified thresholds. Some argue that the more types of fees that are included in the QM rule's definition of points and fees, the more likely a mortgage is to breach the points and fees threshold and no longer qualify as a QM.⁵⁹ The definition of points and fees, therefore, may be important for determining whether a mortgage receives QM status, which can influence whether the lender will extend the loan.

The points and fees threshold varies based on the size of the loan. The threshold is higher for smaller loans because some fees are fixed costs that do not depend on the size of the loan. All else equal, smaller loans would be more likely to breach the thresholds unless their thresholds were higher. The thresholds, which are indexed for inflation, are currently as follows:

- 3% of the total loan amount for a loan greater than or equal to \$100,000;
- \$3,000 for a loan less than \$100,000 but greater than or equal to \$60,000;
- 5% of the total amount for a loan less than \$60,000 but greater than or equal to \$20,000;
- \$1,000 for a loan less than \$20,000 but greater than or equal to \$12,500; and
- 8% of the total loan amount for a loan less than \$12,500.⁶⁰

A loan that is above the respective points and fees cap cannot be a QM.

⁵⁷ For the definition of a QM, see 12 C.F.R. §1026.43.

⁵⁸ CFPB, Prepared remarks of Richard Cordray at a meeting of the Credit Union National Association, February 27, 2013, at <http://www.consumerfinance.gov/speeches/prepared-remarks-of-richard-cordray-at-a-meeting-of-the-credit-union-national-association/>. For a preliminary analysis of the effect of the QM rule on originations, see Bing Bai, *Data show surprisingly little impact of new mortgage rules*, Urban Institute, August 21, 2014, at <http://www.urban.org/urban-wire/data-show-surprisingly-little-impact-new-mortgage-rules>.

⁵⁹ It is possible, however, that the market may adapt and have new fees so that the current definition may not affect future outcomes.

⁶⁰ CFPB, "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act," 78 *Federal Register* 6587, January 30, 2013.

The definition of points and fees includes certain costs associated with originating the mortgage. The term point refers to compensation paid up front to the lender by the borrower. A point is expressed as a percentage of the loan amount, with one point equal to 1% of the loan amount.⁶¹ The definition of fees has several different categories, but what is most pertinent with respect to H.R. 685 is that certain fees are excluded from the definition of points and fees if "the charge is paid to a third party unaffiliated with the creditor."⁶² Certain fees paid to third parties affiliated⁶³ with the lender are included in the definition. H.R. 685 would change the treatment of fees for third parties affiliated with the lender by allowing (in some cases) those fees to also be excluded from the definition of points and fees.

Policy Discussion. H.R. 685 would change the treatment of several types of fees. However, most of the policy debate surrounding H.R. 685 has focused on title insurance because title insurance is one of the larger fees associated with a mortgage that would be affected by the changes H.R. 685 proposes to the points and fees definition.⁶⁴ Title insurance involves "searching the property's records to ensure that [a particular individual is] the rightful owner and to check for liens."⁶⁵ Title insurance provides protection to the lender or borrower (depending on the type of policy) if there turns out to be a defect in the title. Under the current definition for points and fees, fees for title insurance provided by a title insurer that is independent of or unaffiliated with the lender may be *excluded* from the points and fees definition, but the fees for an affiliated title insurer must be *included* in the definition of points and fees. H.R. 685 would allow fees for affiliated title insurance to be treated the same as independent title insurance, and both would be excluded from the points and fees definition.

The cap on points and fees is intended to protect consumers from predatory loans by limiting fees that can be placed on a QM and by aligning the incentives of the lender and the borrower. Lenders can be compensated through points that are paid up front or through interest payments over the life of the loan. The method by which the lender receives compensation may influence the lender's incentive to evaluate the borrower's ability to repay the mortgage. As the CFPB notes in its preamble to the ATR rule, the cap on points and fees may make lenders "take more care in originating a loan when more of the return derives from performance over time (interest payments) rather [than] from upfront payments (points and fees). As such, this provision [the cap on points and fees] may offer lenders more incentive to underwrite these loans carefully."⁶⁶

Supporters of H.R. 685 argue that expanding the definition of points and fees is important to ensuring that credit is available. The Mortgage Bankers Association, for example, stated that as a

⁶¹ In some cases, a point may be excluded from the definition of points and fees if the point results in a reduction in the interest rate that is charged to the borrower. See P.L. 111-203, §1412.

⁶² 15 U.S.C. §1602(bb).

⁶³ An affiliated business arrangement is "an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider." See 12 U.S.C. §2602(7).

⁶⁴ CFPB, "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act," 78 *Federal Register* 6439, January 30, 2013.

⁶⁵ Federal Reserve Board, "A Consumer's Guide to Mortgage Refinancings," at <http://www.federalreserve.gov/pubs/refinancings/>.

⁶⁶ CFPB, "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act," 78 *Federal Register* 6562, January 30, 2013.

result of the current definition of points and fees, "many affiliated loans, particularly those made to low-and moderate-income borrowers, would not qualify as QMs and would be unlikely to be made or would only be available at higher rates due to heightened liability risks. Consumers would lose the ability to choose to take advantage of the convenience and market efficiencies offered by one-stop shopping."⁶⁷ Putting the fees of affiliated and independent title insurers on equal footing in the points and fees definition, supporters argue, would enhance competition in the title insurance industry.⁶⁸

Supporters also contend that because title insurance is regulated predominantly by the states and many states have policies in place to determine how title insurance is priced, there is less need to be concerned that title insurance fees are excessive.⁶⁹ They note that the Real Estate Settlement Procedures Act (RESPA; 12 U.S.C. §§2601, et seq.) allows affiliated business arrangements and already has protections in place for consumers, such as "a requirement to disclose affiliation to consumers."⁷⁰

Opponents of H.R. 685 argue that, by narrowing the definition of points and fees to exclude affiliated providers, the bill "would allow lenders to increase the cost of loans and still be eligible for 'Qualified Mortgage' treatment. This revision risks eroding consumer protections and returning the mortgage market to the days of careless lending focused on short-term profits."⁷¹ For this reason, the Obama Administration has said that "if the President were presented with H.R. 685, his senior advisors would recommend that he veto the bill."⁷²

Critics also contend that removing affiliated title insurers from the points and fees definition would reduce the title insurance industry's incentive to make the price of title insurance, which some believe is already too high, "more reasonable."⁷³ They note that affiliated service providers are likely to be able to receive business through references from their affiliate and, therefore, "affiliates of a creditor may not have to compete in the market with other providers of a service and thus may charge higher prices that get passed on to the consumer."⁷⁴

Escrow. Supporters of H.R. 685 state that the bill would clarify that insurance held in escrow⁷⁵ should not be included in the definition of points and fees.⁷⁶ They argue that the drafting of the

⁶⁷ Letter from Mortgage Bankers Association, April 13, 2015, at <http://mba.informz.net/MBA/data/images/HR685Leadership4132015.pdf>.

⁶⁸ Ibid.

⁶⁹ The Realty Alliance, "Congress Should Pass the Mortgage Choice Act," at <http://www.therealtyalliance.com/getpublicfile.asp?ref=41>.

⁷⁰ CFPB, "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act," 78 *Federal Register* 6438, January 30, 2013.

⁷¹ Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy: H.R. 685 – Mortgage Choice Act of 2015*, April 13, 2015, at https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr685r_20150413.pdf.

⁷² Ibid.

⁷³ Center for Responsible Lending, "H.R. 685 Will Lead to Higher Fees for Homebuyers," at http://ourfinancialsecurity.org/blogs/wp-content/ourfinancialsecurity.org/uploads/2015/04/hr685_will_lead_to_higher_fees_for_homebuyers-fact-sheet-3.18.15.pdf.

⁷⁴ CFPB, "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act," 78 *Federal Register* 6439, January 30, 2013.

⁷⁵ An *escrow* account is an account that a "mortgage lender may set up to pay certain recurring property-related expense ... such as property taxes and homeowner's insurance." Property taxes and homeowner's insurance are often lump-sum payments owed annually or semiannually. See CFPB, "What is an escrow or impound account?," at (continued...)

Dodd-Frank Act left unclear how insurance payments held in escrow should be treated in the definition. Opponents of the bill have not cited this provision as a rationale for their opposition.

CBO estimates that H.R. 685 as ordered reported “would affect direct spending” but that “those effects would be insignificant.”⁷⁷ The bill would not affect revenues or discretionary spending, according to CBO.

H.R. 1259: Helping Expand Lending Practices in Rural Communities Act⁷⁸

H.R. 1259 was passed by the House on April 13, 2015.⁷⁹ H.R. 1259 as passed would establish a temporary, two-year program in which individuals could petition the CFPB for counties that were not designated as rural by the CFPB to receive the rural designation. It also would establish evaluation criteria and an evaluation process for the CFPB to follow in assessing these petitions. H.R. 1259 as passed could increase the credit available to borrowers in rural areas but would reduce some of the protections put in place for rural consumers.

Definition of Rural. Statute allows for exemptions from certain consumer protection requirements for companies operating in rural areas. In implementing the requirements, the CFPB designates certain counties as rural. The exemptions and additional compliance options for lenders in rural areas stem from concerns that borrowers in these areas may have a harder time accessing credit than those in non-rural areas. For example, the ATR rule has an additional compliance option that allows small lenders operating in rural or underserved areas to originate balloon mortgages, subject to some restrictions.⁸⁰

The Dodd-Frank Act specifies the additional compliance option for rural lenders, but it leaves the definition of rural to the discretion of the CFPB. Balloon mortgages originated by lenders in areas that are not designated as rural may be ineligible for the compliance option (although the CFPB has established a two-year transition period to allow “small”⁸¹ lenders to originate balloon mortgages until January 2016, subject to some restrictions). Lenders that benefit from exemptions may offer products to their consumers that lenders in non-rural areas may be less likely to offer, but consumers in rural areas may not receive the same protections as those in non-rural areas.

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<http://www.consumerfinance.gov/askcfpb/140/what-is-an-escrow-or-impound-account.html>.

⁷⁶ The Realty Alliance, “Congress Should Pass the Mortgage Choice Act,” at <http://www.therealtyalliance.com/getpublicfile.asp?ref=41>.

⁷⁷ CBO, *Cost Estimate of H.R. 685*, April 3, 2015, at https://www.cbo.gov/sites/default/files/cbofiles/attachments/hr_685.pdf.

⁷⁸ This section was authored by Sean Hoskins, analyst in Financial Economics.

⁷⁹ A similar bill, H.R. 2672, passed the House in the 113th Congress.

⁸⁰ See 12 C.F.R. §1026.43 and see CRS Report R43081, *The Ability-to-Repay Rule: Possible Effects of the Qualified Mortgage Definition on Credit Availability and Other Selected Issues*, by Sean M. Hoskins.

⁸¹ The CFPB originally defined small for the purpose of the ATR rule as having less than or equal to \$2 billion in assets and originating 500 or fewer mortgages in the previous year. The January 2015 proposal would, among other things, raise the threshold to 2,000 mortgage loans. See CFPB, “CFPB Issues Proposal To Facilitate Access To Credit In Rural And Underserved Areas,” January 29, 2015, at <http://www.consumerfinance.gov/newsroom/cfpb-issues-proposal-to-facilitate-access-to-credit-in-rural-and-underserved-areas/>.

When publishing the ATR rule, the CFPB stated that it considers its method of designating counties as rural, which is based on the U.S. Department of Agriculture's Urban Influence Codes,⁸² to be consistent with the intent of the exemptions contained in statute. The CFPB estimated that its definition of rural results in 9.7% of the total U.S. population being in rural areas.⁸³ However, in light of various questions about its definition of rural raised during the comment period, the CFPB said in 2013 that it intended "to study whether the [definition] of 'rural' ... should be adjusted."⁸⁴ As a result, the CFPB issued a proposed rule in January 2015 to expand the definition of rural as a means of facilitating access to credit in rural areas. The new definition would have two prongs: an area could be deemed rural under the existing methodology involving the Urban Influence Codes or, if it is not designated as rural by that test, it could qualify under an alternative method that involves the Census Bureau's census block data.

To qualify for some of the exemptions, a lender not only must operate in a rural area but also must meet the CFPB's definition of small, which the CFPB also expanded in its January 2015 proposal.⁸⁵ Based on 2013 data, the CFPB estimates "that the number of rural small creditors would increase from about 2,400 to about 4,100 if the proposed provisions are adopted."⁸⁶

Policy Discussion. Although the proposed rule is intended to expand credit availability, the CFPB notes that its analysis does not provide "direct evidence to estimate the degree to which the proposed provisions would increase access to credit."⁸⁷ The CFPB explains that its inability to estimate the change in credit availability from the proposal may be due to data limitations that prevent it from testing certain hypotheses.⁸⁸ Alternatively, the CFPB notes that the change in credit availability may be difficult to estimate because borrowers in rural areas already may be adequately served by lenders and therefore may not benefit from the CFPB's expanded definition.⁸⁹

The CFPB maintains that the use of census blocks, as suggested in its proposed rule, allows for a more granular approach, but critics have argued that the new approach "is still inadequate because census tracts are only updated once every 10 years."⁹⁰ Supporters of H.R. 1259 believe the CFPB's method of designating counties as rural is inflexible and may not account for "atypical population distributions or geographic boundaries."⁹¹ H.R. 1259 is intended, supporters argue, to

⁸² For the definition of rural, see 12 C.F.R. § 1026.35.

⁸³ CFPB, "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act," 78 *Federal Register* 6543, January 30, 2013.

⁸⁴ CFPB, "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act," p. 6, at http://files.consumerfinance.gov/f/201305_cfpb_final-rule_atr-concurrent-final-rule.pdf.

⁸⁵ The CFPB originally defined small for the purpose of the ATR rule as having less than or equal to \$2 billion in assets and originating 500 or fewer mortgages in the previous year. The January 2015 proposal would, among other things, raise the threshold to 2,000 mortgage loans. See CFPB, "CFPB Issues Proposal To Facilitate Access To Credit In Rural And Underserved Areas," January 29, 2015, at <http://www.consumerfinance.gov/newsroom/cfpb-issues-proposal-to-facilitate-access-to-credit-in-rural-and-underserved-areas/>.

⁸⁶ CFPB, *Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z)*, p. 69, at http://files.consumerfinance.gov/f/201501_cfpb_amendments-relating-to-small-creditors-and-rural-or-underserved-areas.pdf.

⁸⁷ *Ibid.*, p. 72.

⁸⁸ *Ibid.*, p. 73.

⁸⁹ *Ibid.*

⁹⁰ Rep. Andy Barr, *Congressional Record*, vol. 161, part 52 (April 13, 2015), p. H2121.

⁹¹ Conference of State Bank Supervisors, "Letter of Support for H.R. 2672," December 4, 2013, at [http://www.csbs.org/\(continued...\)](http://www.csbs.org/(continued...))

provide a way to challenge a CFPB designation and invites individuals “to participate in their government and provide input on matters of local knowledge. It is about making the Federal Government more accessible, more accountable, and more responsive to the people who know their local communities best.”⁹²

CBO estimates that H.R. 1259 as ordered reported would increase direct spending by \$1 million over the next 10 years but would not affect revenues or discretionary spending.⁹³

H.R. 1408: Mortgage Servicing Asset Capital Requirements Act of 2015⁹⁴

H.R. 1408 was ordered to be reported by the House Committee on Financial Services on March 26, 2015.⁹⁵ H.R. 1408 as ordered to be reported would require the federal banking regulators—the Federal Reserve, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and National Credit Union Administration—to “conduct a study of the appropriate capital requirements for mortgage servicing assets for nonsystemic banking institutions”⁹⁶ and would delay the implementation of certain capital requirements until the report had been completed. Nonsystemic banking institutions are defined as those banking institutions that have not been identified by the Financial Stability Board (an intergovernmental body in which the United States participates) as a global systemically important bank.⁹⁷ Eight of the largest U.S. banks currently have been identified as global systemically important banks.⁹⁸

As discussed in more detail below, banks have identified the capital treatment for mortgage servicing assets (MSAs) as one of the more costly aspects of the new capital requirements. Supporters of H.R. 1408 want to delay implementation of the capital requirements until the regulators further study MSAs. Opponents, by contrast, would like to see the capital rule implemented without delay, although some acknowledge that there may be issues with the rule’s treatment of MSAs.

Mortgage Servicing Assets and Basel III. Servicers collect payments from borrowers that are current and forward them to the mortgage holder, work with borrowers that are delinquent to try

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legislative/Documents/CSBSLetterofSupportforHR2672Dec42013.pdf.

⁹² Rep. Andy Barr, *Congressional Record*, vol. 161, part 52 (April 13, 2015), p. H2121.

⁹³ CBO, *Cost Estimate of H.R. 1259*, April 6, 2015, at <https://www.cbo.gov/sites/default/files/cbofiles/attachments/hr-1259.pdf>.

⁹⁴ This section was authored by Sean Hoskins, analyst in Financial Economics.

⁹⁵ A similar bill, H.R. 4042, was ordered to be reported by the Financial Services Committee in the 113th Congress.

⁹⁶ H.R. 1408, §2.

⁹⁷ For more on the Financial Stability Board, see CRS Report IF10129, *Introduction to Financial Services: International Supervision*, by Martin A. Weiss.

⁹⁸ Eight U.S. firms currently would be identified as global systemically important banks under the proposal: Bank of America Corporation, the Bank of New York Mellon Corporation, Citigroup Inc., The Goldman Sachs Group, Inc., JPMorgan Chase & Co., Morgan Stanley, State Street Corporation, and Wells Fargo & Company. For more on global systemically important banks, see Federal Reserve, press release, December 9, 2014, at <http://www.federalreserve.gov/newsevents/press/bcreg/20141209a.htm>.

to get them current, and extinguish the mortgage (such as through foreclosure) if a borrower is in default. A mortgage servicer is compensated for its work. A mortgage holder can service the mortgage itself or hire an agent to act on its behalf. Just as the holder of a mortgage can sell the mortgage and the right to receive the stream of payments associated with a mortgage to a different investor, a servicer can sell to a different servicer the right to service a mortgage and to receive the compensation for doing so, which can make mortgage servicing a valuable asset. A *mortgage servicing asset*, therefore, is an asset that results "from contracts to service loans secured by real estate, where such loans are owned by third parties."⁹⁹ Some banks will originate a mortgage and sell the mortgage to a different investor but retain the servicing of the mortgage (so they keep the MSA) to maintain their relationship with the customer.

Banks are required to fund their assets with a certain amount of capital to protect against the possibility that their assets may drop in value. The riskier an asset, the more capital a bank is required to hold to guard against losses. The Basel III framework is an international agreement with U.S. participation that includes guidelines on how banks should be regulated, such as how much capital they are required to hold against certain assets.¹⁰⁰ The federal bank regulators have issued rules generally implementing the Basel III framework and set capital requirements that banks must follow.¹⁰¹

Policy Discussion. The new capital requirements mandate more capital for MSAs, making it more costly for banks to hold MSAs. As a result, some banks have started selling their MSAs and nonbanks (financial institutions that do not accept deposits and are not subject to the Basel III capital requirements) have purchased MSAs.¹⁰² Although the CFPB regulates nonbank mortgage servicers to ensure that they comply with consumer protections,¹⁰³ some are worried that the growth of nonbank servicers and the sale of MSAs may "trigger a race to the bottom that puts homeowners at risk" as nonbank servicers cut costs to compete for business.¹⁰⁴

Given the concerns about the effect the Basel III capital requirements are having on the mortgage servicing market, some supporters of H.R. 1408 argue that the MSA capital requirements should be delayed for all but the largest institutions. They contend that "there needs to be additional review of whether or not additional capital is required simply for mortgage servicing."¹⁰⁵ Supporters do not believe the regulators performed sufficient analysis of the capital requirements'

⁹⁹ H.R. 1408, §2.

¹⁰⁰ For more on Basel, see CRS Report R42744, *U.S. Implementation of the Basel Capital Regulatory Framework*, by Darryl E. Getter. The National Credit Union Administration (NCUA) has a similar capital rule for credit unions. See NCUA, "Risk-Based Capital," 80 *Federal Register* 17, January 27, 2015.

¹⁰¹ Although banks have begun implementing the Basel III capital rules already, including the new mortgage servicing asset (MSA) treatment, the new treatment will not be fully phased in for several years. See Federal Reserve, Office of the Comptroller of the Currency, "Regulatory Capital Rules," 78 *Federal Register* 62079, October 11, 2013.

¹⁰² For more on the market shift to nonbank servicers, see Laurie Goodman and Pamela Lee, *OASIS: A Securitization Born from MSR Transfers*, Urban Institute, at <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413086-OASIS-A-Securitization-Born-from-MSR-Transfers.PDF>.

¹⁰³ CRS Report R42572, *The Consumer Financial Protection Bureau (CFPB): A Legal Analysis*, by David H. Carpenter.

¹⁰⁴ Benjamin Lawsky, "Excerpts from Superintendent Lawsky's Remarks on Non-Bank Mortgage Servicing in New York City," May 20, 2014, at <http://www.dfs.ny.gov/about/press2014/pr1405201.htm>.

¹⁰⁵ Attributed to Rep. Ed Perlmutter by CQ Congressional Transcripts, "House Financial Services Committee Holds Markup on Financial Regulatory Legislation, March 25, 2015, at <http://www.cq.com/doc/financialtranscripts-4653577?9&search=M9QutUd4>.

implications prior to issuing these requirements and argue that they should do so before the rule takes effect. Supporters also note that Basel III is an international agreement but that MSAs are a product of the U.S. housing finance system, which is different than the housing finance system in other countries. As a result, they contend that additional study needs to be given to this unique topic.¹⁰⁶

Some opponents of H.R. 1408 acknowledge that servicing has migrated to nonbanks and have expressed concerns about the implications of that migration. They “fully support additional research into the topics of the study which make up a large portion of” H.R. 1408.¹⁰⁷ But these opponents do not want implementation of the capital requirements to be delayed while the study is ongoing because they believe Basel III is important to the safety and soundness of the banking system.¹⁰⁸

CBO estimates that H.R. 1408 as ordered to be reported would affect direct spending and revenues but that “the net effect on the federal budget over the next 10 years would not be significant.”¹⁰⁹ CBO notes that by delaying the implementation of the capital requirements, H.R. 1408

would temporarily increase the regulatory capital of some banks by including additional MSAs as capital. That increase could delay the corrective action or closure of a bank, potentially increasing the cost of resolution if it was to ultimately fail. However, for a number of reasons—the brief duration of the delay, the low ratio of MSAs to total assets, the relatively low number of projected bank failures over the next year, and the phase-in of the current rules—CBO expects that the probability and cost of future bank failures would not increase significantly under the bill.¹¹⁰

H.R. 1529: Community Institution Mortgage Relief Act of 2015¹¹¹

H.R. 1529 was ordered reported by the House Committee on Financial Services on April 6, 2015.¹¹² H.R. 1529 as ordered reported would make two modifications to CFPB mortgage rules. It would (1) exempt from certain escrow requirements any mortgage held by a lender with assets of \$10 billion or less if the mortgage is held in the lender’s portfolio for three years and (2) exempt from certain servicing requirements any servicer that annually services 20,000 mortgages

¹⁰⁶ See American Bankers Association, “Letter to Representatives Luetkemeyer and Perlmutter,” May 12, 2014, at <http://www.aba.com/Advocacy/LetterstoCongress/Documents/ABALetteronMSAStop-StudyBill.pdf>.

¹⁰⁷ Attributed to Rep. Maxine Waters by CQ Congressional Transcripts, “House Financial Services Committee Holds Markup on Financial Regulatory Legislation, March 25, 2015, at <http://www.cq.com/doc/financialtranscripts-4653577?9&search=M9QutUd4>.

¹⁰⁸ CQ Congressional Transcripts, “House Financial Services Committee Holds Markup on Financial Regulatory Legislation, March 25, 2015, at <http://www.cq.com/doc/financialtranscripts-4653577?9&search=M9QutUd4>.

¹⁰⁹ CBO, *Cost Estimate of H.R. 1408*, April 9, 2015, at https://www.cbo.gov/sites/default/files/cbofiles/attachments/hr1408_1.pdf.

¹¹⁰ Regulatory capital ratios would increase because the computation used to determine capital levels would allow banks to hold less capital. See *Ibid.*

¹¹¹ This section was authored by Sean Hoskins, analyst in Financial Economics.

¹¹² A similar bill, H.R. 4521, was ordered to be reported by the Financial Services Committee in the 113th Congress.

or fewer. Supporters of H.R. 1529 argue that the bill would reduce the burden on small lenders and servicers of complying with these regulations while giving added flexibility to consumers. Opponents argue that the bill would roll back consumer protections that were put in place in response to the housing and foreclosure crisis.

Escrow Accounts. An *escrow* account is an account that a “mortgage lender may set up to pay certain recurring property-related expenses ... such as property taxes and homeowner’s insurance.”¹¹³ Property taxes and homeowner’s insurance often are lump-sum payments owed annually or semiannually. To ensure a borrower has enough money to make these payments, a lender may divide up the amount owed and add it to a borrower’s monthly payment. The additional amount paid each month is placed in the escrow account and then drawn on by the mortgage servicer that administers the account to make the required annual or semiannual payments. Maintaining escrow accounts for borrowers is an additional cost to banks and may be especially costly for smaller firms.

An escrow account is not required for all types of mortgages but had been required for at least one year for higher-priced mortgage loans even before the Dodd-Frank Act.¹¹⁴ A *higher-priced mortgage loan* is a loan with an APR “that exceeds an ‘average prime offer rate’¹¹⁵ for a comparable transaction by 1.5 or more percentage points for transactions secured by a first lien, or by 3.5 or more percentage points for transactions secured by a subordinate lien.”¹¹⁶ If the first lien is a *jumbo mortgage* (above the conforming loan limit¹¹⁷ for Fannie Mae and Freddie Mac), then it is considered a higher-priced mortgage loan if its APR is 2.5 percentage points or more above the average prime offer rate. The Dodd-Frank Act, among other things, extended the amount of time an escrow account for a higher-priced mortgage loan must be maintained from one year to five years, although the escrow account can be terminated after five years only if certain conditions are met. It also provided additional disclosure requirements.¹¹⁸

The Dodd-Frank Act gave the CFPB the discretion to exempt from certain escrow requirements lenders operating predominantly in rural areas if the lenders satisfied certain conditions.¹¹⁹ The CFPB’s escrow rule included exemptions from escrow requirements for lenders that (1) operate predominantly in rural or underserved areas; (2) extend 500 mortgages or fewer; (3) have less than \$2 billion in total assets; and (4) do not escrow for any mortgage they service (with some exceptions).¹²⁰ Additionally, a lender that satisfies the above criteria must intend to hold the loan in its portfolio to be exempt from the escrow requirement for that loan. H.R. 1529 would expand the exemption such that a lender also would be exempt from maintaining an escrow account for a

¹¹³ CFPB, “What is an escrow or impound account?,” at <http://www.consumerfinance.gov/askcfpb/140/what-is-an-escrow-or-impound-account.html>.

¹¹⁴ A higher-priced mortgage loan is different from a high-cost mortgage described in H.R. 650. (See “H.R. 650: Preserving Access to Manufactured Housing Act of 2015.”)

¹¹⁵ The average prime offer rate (APOR) is an estimate of the market mortgage rate based on a survey of rates. The CFPB will publish the APOR weekly.

¹¹⁶ CFPB, “Escrow Requirements Under the Truth in Lending Act (Regulation Z),” 78 *Federal Register* 4726, January 22, 2013.

¹¹⁷ See CRS Report RS22172, *The Conforming Loan Limit*, by N. Eric Weiss and Sean M. Hoskins.

¹¹⁸ CFPB, *Small Entity Compliance Guide: TILA Escrow Rule*, April 18, 2013, p. 4, at http://files.consumerfinance.gov/f/201307_cfpb_updated-sticker_escrows-implementation-guide.pdf.

¹¹⁹ P.L. 111-203, §1461.

¹²⁰ See 12 C.F.R. §1026.35 and CFPB, “Escrow Requirements Under the Truth in Lending Act (Regulation Z),” 78 *Federal Register* 4726, January 22, 2013.

mortgage as long as it satisfied two criteria: (1) the mortgage is held by the lender in its portfolio for three or more years and (2) the lender has \$10 billion or less in assets.

Policy Discussion. When the CFPB issued its escrow rule in January 2013, it estimated that “there are 2,612 exempt creditors who originated ... first-lien higher-priced mortgage loans in 2011.”¹²¹ It also estimated that there would be 5,087 lenders with \$10 billion or less in total assets who, collectively, originated 91,142 first-lien higher-priced mortgage loans in 2011 that would *not* be exempt from the escrow requirements.¹²² If H.R. 1529 had been in place in 2011, those additional 5,087 lenders would have been exempt from the escrow requirements for the loans held in portfolio for three or more years.

Supporters of H.R. 1529 argue that expanding the escrow exemption is important for reducing the regulatory burden on small banks. Small banks already would have the incentive, the argument goes, to make sure the borrower will pay taxes and insurance even without the escrow account because the lender is exposed to some of the risk by keeping the mortgage in its portfolio.¹²³ Because of this “skin in the game,” supporters believe the escrow requirement is unduly burdensome for small banks. They also believe the requirement can be an unnecessary burden to consumers who would rather manage their taxes and insurance payments on their own, especially if those consumers have a history of making their required payments on previous loans.¹²⁴

Opponents of H.R. 1529 argue that the escrow requirement is an important consumer protection. The escrow account is required for higher-priced mortgage loans, and critics contend that the higher interest rate on those loans reflects the fact that borrowers with these loans often are riskier subprime borrowers.¹²⁵ Because these borrowers already face a higher risk of default, opponents of H.R. 1529 believe the escrow requirement is important for ensuring these borrowers are not “being blindsided by additional costs at the end of each year.”¹²⁶ They argue that the exemption the CFPB gave for certain smaller entities already strikes the appropriate balance between reducing the regulatory burden for some banks and protecting consumers.

Mortgage Servicers. The second part of H.R. 1529 addresses *mortgage servicers*. Servicers received added attention from Congress after the surge in foreclosures following the bursting of the housing bubble. The Dodd-Frank Act imposed additional requirements on servicers to protect borrowers through amendments to TILA and RESPA.¹²⁷ The new servicing protections¹²⁸ include, among other things, additional disclosure requirements about the timing of rate changes, requirements for how payments would be credited, obligations to address errors in a timely

¹²¹ CFPB, “Escrow Requirements Under the Truth in Lending Act (Regulation Z),” 78 *Federal Register* 4747, January 22, 2013. The data the CFPB uses do not include non-depository institutions, so the CFPB estimates are a lower bound.

¹²² *Ibid.*, 4748..

¹²³ CQ Congressional Transcripts, “House Financial Services Committee Holds Markup on Financial Regulatory Legislation, March 25, 2015, at <http://www.cq.com/doc/financialtranscripts-465357779&search=M9QutUd4>.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ 12 U.S.C. §§2601 et seq.

¹²⁸ Some of the servicing requirements are specific mandates in the Dodd-Frank Act, and some are issued at the discretion of the CFPB pursuant to its authority under RESPA and TILA.

fashion, and guidance on when foreclosure could be initiated and how servicers must have continuity of contact with borrowers. The CFPB issued rules implementing those changes.¹²⁹

Servicers that service 5,000 mortgages or fewer and only service mortgages that they or an affiliate owns or originated are considered *small servicers* and are exempted from some but not all TILA and RESPA servicing requirements.¹³⁰ H.R. 1529 would modify the exemption for the rules implemented under RESPA by directing the CFPB to provide exemptions to or adjustments from the RESPA servicing provisions for servicers that service 20,000 mortgages or fewer “in order to reduce regulatory burdens while appropriately balancing consumer protections.”¹³¹ The RESPA servicing provisions that could be affected by H.R. 1529 include, among other things, how escrow accounts (if they are required) would be administered, disclosure to an applicant about whether his or her servicing can be sold or transferred, notice to the borrower if the loan is transferred, prohibitions on the servicer relating to fees and imposing certain types of insurance, and other consumer protections.¹³²

Policy Discussion. In its discussion of its servicing rule, the CFPB notes that “servicers that service relatively few loans, all of which they either originated or hold on portfolio, generally have incentives to service well.”¹³³ The incentive to service the loans well comes from the fact that “foregoing the returns to scale of a large servicing portfolio indicates that the servicer chooses not to profit from volume, and owning or having originated all of the loans serviced indicates a stake in either the performance of the loan or in an ongoing relationship with the borrower.”¹³⁴ The CFPB, therefore, found that an “exemption may be appropriate only for servicers that service a relatively small number of loans and either own or originated the loans they service.”¹³⁵

The CFPB set the loan threshold at 5,000 loans because it concluded that this category “identifies the group of servicers that make loans only or largely in their local communities or more generally have incentives to provide high levels of customer contact and information.”¹³⁶ The CFPB’s data analysis of the threshold concluded that

With the threshold set at 5,000 loans, the Bureau estimates that over 98% of insured depositories and credit unions with under \$2 billion in assets fall beneath the threshold. In contrast, only 29% of such institutions with over \$2 billion in assets fall beneath the threshold and only 11% of such institutions with over \$10 billion in assets do so. Further,

¹²⁹ CFPB, “Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X),” 78 *Federal Register* 10695, February 14, 2013, and CFPB, “Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z),” 78 *Federal Register* 10901, February 14, 2013.

¹³⁰ See, for example, 12 C.F.R. 1026.41. The CFPB provided exemptions to small servicers from certain TILA requirements using its authority under TILA. The CFPB elected not to extend certain RESPA requirements to small servicers. See CFPB, “Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X),” 78 *Federal Register* 10699, February 14, 2013.

¹³¹ H.R. 4521, §3.

¹³² For a full list, see 12 U.S.C. §2605 and CFPB, “Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X),” 78 *Federal Register* 10699, February 14, 2013.

¹³³ CFPB, “Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z),” 78 *Federal Register* 10980, February 14, 2013.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*, 10975.

¹³⁶ *Ibid.*, 10981.

over 99.5% of insured depositories and credit unions that meet the traditional threshold for a community bank—\$1 billion in assets—fall beneath the threshold. The Bureau estimates there are about 60 million closed-end mortgage loans overall, with about 5.7 million serviced by insured depositories and credit unions that qualify for the exemption.¹³⁷

The CFPB's 2013 rulemaking did not discuss the effect of setting the threshold at 20,000 loans, as H.R. 1529 would, but it noted that if "the loan count threshold were set at 10,000 mortgage loans, for example, over 99.5% of insured depositories and credit unions with under \$2 billion in assets would fall beneath the threshold. However, 50% of insured depositories with over \$2 billion in assets and 20% of those with over \$10 billion in assets would fall beneath the threshold."¹³⁸ Those entities that service more than 5,000 loans, the CFPB contends, may be more likely to use a different servicing model that would not have the same "incentives to provide high levels of customer contact and information."¹³⁹ The CFPB, therefore, set the threshold at 5,000 loans.

Supporters of H.R. 1529 argue that the bill is intended to give the CFPB the discretion to either provide "exemptions or adjustments to the requirements of the existing codes section and should do so appropriately balancing consumer protections. So the near-small institutions will either get the relief currently granted to the small institutions or a bit less relief, and that will be determined by the CFPB."¹⁴⁰ Raising the threshold from 5,000 loans to 20,000 loans, supporters argue, "will better delineate small servicers from the large servicers, and give credit union and community banks greater flexibility to ensure that more of their customers can stay in their homes."¹⁴¹

Opponents of H.R. 1529 have contended that the exemptions in the CFPB's regulations are sufficient to protect small lenders and that expanding the exemptions would weaken the protections available to consumers. They note that by not only raising the threshold but also removing the requirement that servicers own the mortgage, the servicers would have "less skin in that game if bad servicing practices were to result in default and foreclosure."¹⁴² Critics point to mortgage servicers in particular as actors that performed poorly during the foreclosure crisis and should not receive additional exemptions from CFPB regulations.¹⁴³

CBO estimates that H.R. 1529 as ordered reported would "increase direct spending by less than \$500,000 for expenses of the CFPB to prepare and enforce new rules" but would not affect revenues or discretionary spending.¹⁴⁴

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid. The CFPB notes that its estimates are only for depository institutions and do not include non-depositories due to data limitations.

¹⁴⁰ Attributed to Rep. Brad Sherman by CQ Congressional Transcripts, "House Financial Services Committee Holds Markup on Financial Regulatory Legislation, March 25, 2015, at <http://www.cq.com/doc/financialtranscripts-4653577?0&search=4xqeO9ST>.

¹⁴¹ Attributed to Rep. Blaine Luetkemeyer by CQ Congressional Transcripts, "House Financial Services Committee Holds Markup on Financial Regulatory Legislation, March 25, 2015, at <http://www.cq.com/doc/financialtranscripts-4653577?0&search=4xqeO9ST>.

¹⁴² Attributed to Rep. Maxine Waters by CQ Congressional Transcripts, "House Financial Services Committee Holds Markup on Financial Regulatory Legislation, March 25, 2015, at <http://www.cq.com/doc/financialtranscripts-4653577?0&search=4xqeO9ST>.

¹⁴³ Ibid. See also CRS Report R41491, "*Robo-Signing*" and Other Alleged Documentation Problems in Judicial and Nonjudicial Foreclosure Processes, by David H. Carpenter.

¹⁴⁴ CBO, *Cost Estimate of H.R. 1529*, April 3, 2015, at [https://www.cbo.gov/sites/default/files/cbofiles/attachments/](https://www.cbo.gov/sites/default/files/cbofiles/attachments/(continued...))

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